

ATTACHMENT 27

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Horner, Sage

April 29, 2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS)
ANTITRUST LITIGATION)
)
) MDL No. 2002
) 08-md-02002
) HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF SAGE HORNER

Phoenix, Arizona
April 29, 2014
9:04 a.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200

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VIDEOTAPED DEPOSITION OF SAGE HORNER commenced at 9:04 a.m., on April 29, 2014, at Driver and Nix Court Reporters, 3131 East Clarendon Avenue, Suite 108, Phoenix, Arizona, before Kristy A. Ceton, RPR, Arizona Certified Court Reporter No. 50200.

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Phoenix, Arizona

April 29, 2014

9:04 a.m.

TRANSCRIPT OF PROCEEDINGS

THE VIDEOGRAPHER: Good morning, Everyone. We are on the record. This the beginning of media No. 1 of the videotaped deposition of Sage Horner taken on behalf of the defendants in the matter of in regarding Processed Eggs Product Antitrust Litigation, Case No. MDL No. 200208-MD-02002 filed in the United States District Court for the Eastern District of Pennsylvania.

Today is April 29th, 2014, at approximately 9:04 a.m. This deposition is taking place at the offices of Driver and Nix Court Reporters located in Phoenix, Arizona. Your certified reporter is Kristy Ceton and Ed Kishel is your certified legal videographer, both appearing on behalf of Henderson Legal Services located in Washington, D.C.

Would counsel please identify yourselves and state which party you represent.

MS. CRABTREE: Molly Crabtree of Porter Wright for Rose Acre Farms.

MR. MURRAY: Kevin Murray from Kenny Nachwalter on behalf of Plaintiff Albertsons, LLC,

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<p style="text-align: right;">6</p> <p>1 and also on behalf of the witness, Mr. Horner. 2 THE VIDEOGRAPHER: Thank you. 3 Will the court reporter please swear in 4 the witness. 5 6 SAGE HORNER, 7 called as a witness herein, having been first duly 8 sworn, was examined and testified as follows: 9 10 EXAMINATION 11 BY MS. CRABTREE: 12 Q. Good morning. 13 A. Morning. 14 Q. Could you please state your full name for 15 the record? 16 A. Sure. It's Sage Horner. 17 Q. And, Mr. Horner, with whom are you 18 currently employed? 19 A. Fresh Thyme Farmers Market. Thyme is 20 spelled like the herb. 21 Q. And what do you do with Fresh Thyme? 22 A. I'm the senior vice president of 23 merchandising and marketing. 24 Q. What is Fresh Thyme? 25 A. It's a retail grocery company that's in</p>	<p style="text-align: right;">8</p> <p>1 So all categories, all vendors. 2 Q. But no direct contact with eggs? 3 A. No. We have a category management 4 purchasing team that handles that. 5 Q. What was your position prior to being a 6 senior vice president with Fresh Thyme? 7 A. I was group vice president of client 8 relations for a company called Park City Group, which 9 is a supply chain software company that serves the 10 grocery industry, retail industry. 11 Q. And how long were you in that position? 12 A. About a year. 13 Q. And who were price city -- or Park City 14 Group's clients? 15 A. A myriad of large and small grocery, 16 drug, and mass retailers across the U.S. and 17 manufacturers. 18 Q. And what about prior to Park City Group? 19 A. I was with a company called Sunflower 20 Farmers Markets. I was vice president of 21 merchandising, marketing, and supply chain for them. 22 Q. Did you have any responsibility for eggs 23 or egg products in that position? 24 A. Similar to my answer about Fresh Thyme. 25 Ultimately, all purchasing fell under my authority, I</p>
<p style="text-align: right;">7</p> <p>1 the natural and organic space. 2 Q. So the whole foods-type space? 3 A. With a -- Yes. With more of a focus on 4 kind of value, so quite frankly, a lower price point 5 approach. But, yeah, healthier retail grocery. 6 Q. And what is the geographic scope of the 7 Fresh Thyme Markets? 8 A. We actually just started the company 9 about 18 months ago and opened our first store in the 10 Chicago suburbs last week. 11 Q. Congratulations. 12 A. Thanks. 13 Q. I take it you are one of the founding 14 members? 15 A. Yeah. 16 Q. What are your responsibilities as senior 17 vice president of merchandise and marketing for Fresh 18 Thyme? 19 A. I have the IT function, the purchasing 20 function, the marketing function, and all of retail 21 operations reporting to me. 22 Q. Do you have any responsibility for eggs 23 or egg products in your current position? 24 A. I mean indirectly I'm over all 25 purchasing, in essence, functions for the company.</p>	<p style="text-align: right;">9</p> <p>1 guess, but I didn't at any granular level. I had 2 other people that handled at that level. 3 Q. And how long were you with Sunflower? 4 A. Four years. 5 Q. What about before Sunflower? 6 A. I had a small -- I think I had a small 7 consulting thing I did after I left SuperValu 8 Albertsons. I mean, that's a good four companies 9 ago. I had a small consulting thing that I did for 10 about nine months that was post a longtime career I 11 had with Albertsons, Inc., and SuperValu. 12 Q. Can you tell me about your positions 13 within Albertsons and SuperValu? 14 A. Sure. 15 Q. We can go backwards or forwards. Your 16 choice. 17 A. Why don't we go backwards from where I 18 was -- 19 Q. Okay. 20 A. -- when I left the company. 21 So I was -- My recollection was my title 22 was corporate director of strategic sourcing and 23 procurement. And I -- Honestly, it's been long 24 enough ago where I'm not sure if that's exactly 25 right.</p>

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<p style="text-align: right;">10</p> <p>1 Q. That's pretty specific.</p> <p>2 A. And at the time I left the company, I had</p> <p>3 responsibility for the nonfoods part of the business,</p> <p>4 so health and beauty care, general merchandise, and</p> <p>5 import sourcing. Not -- not food items.</p> <p>6 Prior to that, I had different director</p> <p>7 level roles over merchandising and procurement</p> <p>8 activities that, quite frankly, through the years</p> <p>9 spanned most all departments, most all categories.</p> <p>10 And then going backwards in time, I had,</p> <p>11 quite frankly, a very typical succession through the</p> <p>12 company that really started at retail level in</p> <p>13 stores, moved through buying roles, moved through</p> <p>14 merchandising roles, and ultimately was kind of that</p> <p>15 director level after 20, 23 years, 24 years with the</p> <p>16 combined Albertsons SuperValu company.</p> <p>17 Q. When you say the combined company, were</p> <p>18 you working for one entity as opposed to the other?</p> <p>19 A. Which companies are you referring to?</p> <p>20 Q. Albertsons, Inc., and SuperValu.</p> <p>21 A. So my recollection of how to, I guess,</p> <p>22 state that is that both were public companies.</p> <p>23 SuperValu acquired Albertsons, Inc., and there was no</p> <p>24 -- there was no way to work for both. You know, you</p> <p>25 either went forward and became a SuperValu employee</p>	<p style="text-align: right;">12</p> <p>1 Albertsons and SuperValu, were you involved with eggs</p> <p>2 and egg products?</p> <p>3 A. Yes.</p> <p>4 Q. And approximately when was that?</p> <p>5 A. Well, what -- what I recall is that there</p> <p>6 were earlier time frames in my career when I was at a</p> <p>7 division level that I had responsibility from a</p> <p>8 buying perspective to transactionally just cut orders</p> <p>9 and order eggs through our distribution environment</p> <p>10 and out to our stores.</p> <p>11 I have no recollection of how far back or</p> <p>12 what year or which divisions or whatever. But I</p> <p>13 certainly had a tactical piece way back when.</p> <p>14 And then as part of my responsibilities</p> <p>15 at a director level, eggs, like other categories,</p> <p>16 were reviewed and the business was sourced out to</p> <p>17 different suppliers based on their participation in</p> <p>18 category reviews.</p> <p>19 And that would have been the latter part</p> <p>20 of my career. I don't recall specifically when or</p> <p>21 ...</p> <p>22 Q. Well, we'll look at some documents that</p> <p>23 may help with that --</p> <p>24 A. Okay.</p> <p>25 Q. -- but I just wanted to get a general</p>
<p style="text-align: right;">11</p> <p>1 or you went with one of the other pieces of the</p> <p>2 business that was sold off or you didn't have a job.</p> <p>3 I was offered a position to continue on</p> <p>4 with SuperValu at the time they acquired Albertsons,</p> <p>5 Inc., and that's when I moved from being an</p> <p>6 Albertsons employee to a SuperValu employee.</p> <p>7 Q. So you were with Albertsons before the</p> <p>8 two companies combined?</p> <p>9 A. Correct.</p> <p>10 MR. MURRAY: And he was not with</p> <p>11 Albertsons, LLC, as the deposition notice indicates.</p> <p>12 THE WITNESS: Yeah. Never was.</p> <p>13 MR. MURRAY: He never was with them.</p> <p>14 THE WITNESS: Never have. Never was.</p> <p>15 MR. MURRAY: You're free to inquire, but</p> <p>16 I wanted to correct that in the notice.</p> <p>17 MS. CRABTREE: Okay. Appreciate it.</p> <p>18 Q. BY MS. CRABTREE: When did you start with</p> <p>19 Albertsons, Inc.?</p> <p>20 A. I believe 1986 as a box boy at a grocery</p> <p>21 store in Mission Viejo, California.</p> <p>22 Q. And when did you leave SuperValu?</p> <p>23 A. To the best of my recollection, it was in</p> <p>24 the summer of 2008.</p> <p>25 Q. At any point in your positions with</p>	<p style="text-align: right;">13</p> <p>1 sense.</p> <p>2 A. Sure.</p> <p>3 Q. And I want to make sure we're also</p> <p>4 talking about the same thing. When I say "eggs," I'm</p> <p>5 referring to white shell table eggs. Is that fair?</p> <p>6 So when you hear me say that, that's what I'm</p> <p>7 referring to; is that fair?</p> <p>8 A. Understood.</p> <p>9 Q. Have you heard the term "commodity eggs"?</p> <p>10 A. Sure. Yes.</p> <p>11 Q. What does that mean to you today?</p> <p>12 A. Likely, in a private label environment,</p> <p>13 lower cost from a consumer's perspective. Not</p> <p>14 organic, not any kind of cage free, not value added.</p> <p>15 It just means, you know, a standard spec where likely</p> <p>16 cost and quality have a very specific place to</p> <p>17 intersect and -- with somebody's strategy,</p> <p>18 retailerwise.</p> <p>19 Q. Have you heard of specialty eggs?</p> <p>20 A. I've heard of eggs referred to as</p> <p>21 specialty, sure.</p> <p>22 Q. What would -- what would a specialty egg</p> <p>23 be?</p> <p>24 A. My interpretation of what a specialty egg</p> <p>25 would be would be something where it's omega 3, it's</p>

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<p style="text-align: right;">14</p> <p>1 organic, maybe a sizing dynamic to it, things like 2 that.</p> <p>3 Q. So, basically, specialty eggs are 4 noncommodity eggs?</p> <p>5 A. I guess in my mind. But I truly have 6 never thought about that level of differentiation, 7 so ...</p> <p>8 Q. When you were helping to do category 9 review, were you dealing with both commodity and 10 specialty eggs?</p> <p>11 A. I don't have a specific recollection.</p> <p>12 Q. What about egg products? What egg 13 products did you deal with?</p> <p>14 A. I'll have to ask you to be more specific 15 because eggs are in probably 1,000 items in a grocery 16 store, so ...</p> <p>17 Q. I want to say as part of a category 18 review, did you ever look at the egg products that 19 Albertsons, SuperValu was selling and help with the 20 procurement of those?</p> <p>21 A. I really don't know what you mean by egg 22 product. Do you just mean different types of eggs?</p> <p>23 Q. Like an Egg Beaters or liquid egg.</p> <p>24 A. I don't specifically recall.</p> <p>25 Q. Okay. How often would you do -- Were</p>	<p style="text-align: right;">16</p> <p>1 other category review, was to make sure that the 2 sourcing manager or category manager who was actually 3 directly interacting with the vendors was following 4 our set procedures, appropriate templates, conducting 5 the process consistent with what our expectations 6 were as a company, and providing assistance along the 7 way. Sometimes participating in meetings; many times 8 not.</p> <p>9 Playing more of a manager over the 10 process and the people more so than being a direct 11 participant in the sourcing process itself.</p> <p>12 Q. Was the goal of a category review to 13 reduce Albertsons' or SuperValu's costs?</p> <p>14 A. My recollection was our goal had 15 multifronts to it and that would have been one of the 16 hopeful things we would have accomplished through 17 sourcing a category out.</p> <p>18 Q. What were the other goals?</p> <p>19 A. Making sure that the suppliers were 20 qualified for us to do business with from a food 21 handling, food safety, financial strength, service 22 provider context. You know, making sure that they 23 could handle the geography of the company at the time 24 and volume.</p> <p>25 And at the time, Albertsons was a -- as I</p>
<p style="text-align: right;">15</p> <p>1 eggs part of the dairy category?</p> <p>2 A. Yes.</p> <p>3 Q. How often would you do a category review 4 for dairy?</p> <p>5 A. I don't specifically recall a time frame.</p> <p>6 Q. Would it be every year?</p> <p>7 A. The only thing that comes to mind is that 8 these were agreement-based relationships and that the 9 expiration of an agreement would likely define when 10 we would review the category.</p> <p>11 Q. So when you say agreement relationships, 12 do you mean you had set periods set forth in 13 contracts?</p> <p>14 A. That's my recollection.</p> <p>15 Q. And what would you do during the category 16 review?</p> <p>17 A. So that I understand your question, what 18 would I do?</p> <p>19 Q. You personally. And, understand, 20 anything today I'm asking for your personal 21 recollection. You're not speaking on behalf of any 22 other entity. So if you ever need clarification, I'm 23 happy to give it.</p> <p>24 A. Sure.</p> <p>25 So what I would do, no different than any</p>	<p style="text-align: right;">17</p> <p>1 recall, \$45 billion-a-yearish kind of volume company. 2 So there was a -- In essence, there was a myriad of 3 things that qualified a company to be able to do 4 business with us. We wanted to make sure that we 5 were aligned with the right folks from that context, 6 as well as understand what the volume that we 7 represented meant in terms of an opportunity of 8 improving cost.</p> <p>9 Q. I'd like to talk specifically about a 10 2003 egg bidding process. Do you remember -- 11 Well, first, would -- in 2003, would you 12 be with Albertsons, Inc.?</p> <p>13 A. Correct.</p> <p>14 Q. Do you remember the 2003 egg bidding 15 process?</p> <p>16 A. Not with any specificity, but, yes. I 17 mean ...</p> <p>18 Q. Do you remember there being anything 19 unusual about it?</p> <p>20 A. I don't know what you mean by "unusual."</p> <p>21 Q. Anything stick out in your mind about it 22 that would be -- that you specifically remember?</p> <p>23 A. The only thing that comes to mind is that 24 it was an important large category for the company, 25 geographically complex. I mean, that's about all</p>

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<p style="text-align: right;">18</p> <p>1 that comes to mind.</p> <p>2 Q. At that time, what was the geographic</p> <p>3 scope of Albertsons, Inc.?</p> <p>4 A. Specifically, I don't recall. I mean,</p> <p>5 coast to coast 2,500 stores. I don't remember</p> <p>6 specific states, or -- I could probably recall all</p> <p>7 the different banners, but I don't really remember</p> <p>8 specifically much more than that at that stage of the</p> <p>9 game.</p> <p>10 Q. What banners was Albertsons operating</p> <p>11 under to the best of your recollection at that time?</p> <p>12 A. Shaw's, ACME, Jewel, Albertsons, and</p> <p>13 likely Savon and Osco from a drugstore perspective,</p> <p>14 although things changed through acquisition and</p> <p>15 divestiture through that time frame, and I don't know</p> <p>16 if 2003 if what I just said is accurate or not.</p> <p>17 Q. Fair enough.</p> <p>18 Typically, over what period of time would</p> <p>19 a category review last?</p> <p>20 A. Three months.</p> <p>21 Q. And how did you initiate a category</p> <p>22 review?</p> <p>23 A. An RFI, or request for information, would</p> <p>24 be sent to a group of incumbent and potential</p> <p>25 suppliers.</p>	<p style="text-align: right;">20</p> <p>1 A. Okay. No problem.</p> <p>2 Q. I'll catch up. I have my documents out</p> <p>3 of order.</p> <p>4 Do you recognize this document?</p> <p>5 A. I do not.</p> <p>6 Q. You'll see that this is a series of</p> <p>7 e-mails originating with someone named Gene Gregory</p> <p>8 at unitedegg.com, and that e-mail gets forwarded to</p> <p>9 your -- to Mr. Tom McIntyre.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Who is Tom McIntyre?</p> <p>12 A. At that time, he was a member of our</p> <p>13 sourcing team and I believe reported to me in 2003.</p> <p>14 I mean -- but I don't -- I don't specifically</p> <p>15 remember that. I assume he did.</p> <p>16 Q. And were you at a director level in 2003?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay.</p> <p>19 A. I don't know.</p> <p>20 Q. And Mr. McIntyre sends this to you and</p> <p>21 cc's Mr. Gary Angell. Do you remember who Gary</p> <p>22 Angell was or is, I suppose?</p> <p>23 A. Yes. Not by title, but he was our -- he</p> <p>24 was Albertsons, Inc.'s, corporate dairy merchant,</p> <p>25 I'll say. I don't know titlewise. I don't recall</p>
<p style="text-align: right;">19</p> <p>1 Q. How did you identify potential suppliers?</p> <p>2 A. I didn't.</p> <p>3 Q. Was that the responsibility of someone</p> <p>4 else on that team?</p> <p>5 A. Correct.</p> <p>6 Q. Who would be in charge of identifying the</p> <p>7 potential suppliers?</p> <p>8 A. The title, as I recall, was sourcing</p> <p>9 manager. It may have been buyer or category manager,</p> <p>10 but sourcing manager is what comes to mind.</p> <p>11 Q. And in 2003, do you know who the sourcing</p> <p>12 manager for eggs was?</p> <p>13 A. I don't recall specifically, no.</p> <p>14 Q. I think I'm going to remind you.</p> <p>15 A. Okay.</p> <p>16 MS. CRABTREE: Let's go ahead and mark --</p> <p>17 let's start with 1. We'll mark Horner 1.</p> <p>18 (Exhibit 1 was marked for identification.)</p> <p>19 Q. BY MS. CRABTREE: And if you could take a</p> <p>20 moment -- if you could take a moment to review that</p> <p>21 and let me know when you've had a chance to review.</p> <p>22 And for the record, this is SVL_EGGS_101036.</p> <p>23 A. Okay.</p> <p>24 Q. I actually gave you the wrong document,</p> <p>25 so I'm going to switch tracks for just a minute.</p>	<p style="text-align: right;">21</p> <p>1 specific title, but ...</p> <p>2 Q. Have you ever heard of United Egg</p> <p>3 Producers?</p> <p>4 A. Uh-huh.</p> <p>5 MR. MURRAY: You have to say yes or no.</p> <p>6 THE WITNESS: Yes. I'm sorry.</p> <p>7 Q. BY MS. CRABTREE: And who -- who is --</p> <p>8 What is your understanding of what United Egg</p> <p>9 Producers is?</p> <p>10 A. Just an association of a voluntarily, you</p> <p>11 know, participant association for companies that</p> <p>12 produce eggs.</p> <p>13 Q. Have you heard them referred to as UEP?</p> <p>14 A. I have.</p> <p>15 Q. Have you ever heard the term "UEP</p> <p>16 certified"?</p> <p>17 A. I don't specifically recall hearing that.</p> <p>18 Q. What about animal care certified?</p> <p>19 A. No.</p> <p>20 Q. Do you remember there being any animal</p> <p>21 welfare issues surrounding the 2003 egg bid?</p> <p>22 A. What do you mean by "issues"?</p> <p>23 Q. Was animal welfare a consideration during</p> <p>24 this egg bid?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">22</p> <p>1 Q. In what way?</p> <p>2 A. My recollection is that Albertsons as a</p> <p>3 company had decided that we wanted to do business</p> <p>4 with egg producers that met animal welfare</p> <p>5 guidelines, and that was a -- that was communicated</p> <p>6 as an expectation to be considered for gaining</p> <p>7 business with the company.</p> <p>8 Q. And do you remember any of the companies</p> <p>9 who bid for the egg business in 2003?</p> <p>10 A. I recall company names, but I don't</p> <p>11 specifically recall if they actually did bid for the</p> <p>12 business or not.</p> <p>13 Q. What company names do you recall?</p> <p>14 A. Cal-Maine, Rose Acres, Sparboe. I want</p> <p>15 to say NuCal, or something like that. Nothing else</p> <p>16 specifically comes to mind.</p> <p>17 Q. And in Mr. Gregory's e-mail towards the</p> <p>18 bottom of page 1 and the top of page 2, he writes,</p> <p>19 "We have since heard that Albertsons may have asked</p> <p>20 for bids from suppliers for both animal care</p> <p>21 certified eggs and noncertified eggs." And it goes</p> <p>22 to the top of the next page. "We would like to know</p> <p>23 if Albertsons is still committed to only purchasing</p> <p>24 animal care certified eggs from animal care certified</p> <p>25 companies."</p>	<p style="text-align: right;">24</p> <p>1 Q. Okay. Can you identify Exhibit 2 for me?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Can you tell me what the document is?</p> <p>4 A. It looks like an update that I'm giving</p> <p>5 to a group of people about an entire category review</p> <p>6 and then making a brief comment about a different</p> <p>7 category, butter, that's either getting ready to be</p> <p>8 reviewed or is under review as well.</p> <p>9 Q. So did you prepare Exhibit 2?</p> <p>10 A. I don't recall. I mean, I see my name,</p> <p>11 so ... But I don't recall -- I don't recall writing</p> <p>12 this.</p> <p>13 Q. It is an e-mail from you to a group of</p> <p>14 people, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any reason to doubt that you</p> <p>17 prepared this e-mail?</p> <p>18 A. I don't.</p> <p>19 Q. Would you ever have someone prepare</p> <p>20 something like this on your behalf?</p> <p>21 A. In 2003, no.</p> <p>22 Q. Okay. So you are sending an e-mail to a</p> <p>23 group of people. Who is Tom Lofland?</p> <p>24 A. My recollection is that Tom was one step</p> <p>25 senior to Gary Angell, and so I was providing an</p>
<p style="text-align: right;">23</p> <p>1 Do you see where I'm at?</p> <p>2 A. Uh-huh. Yes.</p> <p>3 Q. And then -- You caught yourself there.</p> <p>4 A. I learn fast.</p> <p>5 Q. And you'll see that on the first page,</p> <p>6 Mr. McIntyre replies, "We are committed to animal</p> <p>7 care certified eggs." And then Mr. Gregory thanks</p> <p>8 him, and Mr. McIntyre forwards that message to you</p> <p>9 with the message, "Interesting. I wonder if this is</p> <p>10 in regards to Sparboe."</p> <p>11 Do you know what Mr. McIntyre was</p> <p>12 referring to there?</p> <p>13 A. I do not.</p> <p>14 Q. Okay. And then the top e-mail it looks</p> <p>15 like you drop off, so I will not ask you about that.</p> <p>16 You can set this one aside.</p> <p>17 A. Okay.</p> <p>18 MS. CRABTREE: Now we'll get to the one I</p> <p>19 meant. We'll mark Horner Exhibit 2.</p> <p>20 MR. MURRAY: Thank you, Molly.</p> <p>21 (Exhibit 2 was marked for identification.)</p> <p>22 Q. BY MS. CRABTREE: If you could take a</p> <p>23 moment to review and let me know when you've had a</p> <p>24 chance. And for the record, this is SVL_EGGS_101051.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">25</p> <p>1 update to a group, but primarily, the corporate</p> <p>2 merchandising staff regarding what was going on in a</p> <p>3 couple of reviews.</p> <p>4 Q. At this point, who were you reporting to?</p> <p>5 A. I don't specifically recall.</p> <p>6 Q. And we talked about Mr. Angell,</p> <p>7 Mr. McIntyre. Who is Patricia Albrecht?</p> <p>8 A. My recollection is she was an analyst</p> <p>9 supporting category review processes.</p> <p>10 Q. And you cc a couple of people. Who is</p> <p>11 Dwight Stanley?</p> <p>12 A. Dwight was the director of procurement</p> <p>13 for Albertsons. To the best of my recollection, that</p> <p>14 was his title. I did report to him for a time frame.</p> <p>15 I have no idea if I did here or not.</p> <p>16 Q. So he was the director of all</p> <p>17 procurement?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. And how about Butch Amyx?</p> <p>20 A. Amyx, yeah. He was a sourcing manager.</p> <p>21 He was part of the procurement team, category review</p> <p>22 team.</p> <p>23 Q. But he wasn't specific to a particular</p> <p>24 category?</p> <p>25 A. I mean, the answer to your question is,</p>

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<p style="text-align: right;">26</p> <p>1 yes, he was, but I have no idea what categories.</p> <p>2 Q. Okay. Fair.</p> <p>3 And John Sugihara?</p> <p>4 A. Exactly the same. Sourcing manager.</p> <p>5 Certainly had categories he owned, but I have no</p> <p>6 recollection of which ones he did or didn't.</p> <p>7 Q. And it looks like this document is an</p> <p>8 assessment of bids that you have received from egg</p> <p>9 producers; is that fair?</p> <p>10 A. I would agree.</p> <p>11 Q. Let's start with No. 1. You have the</p> <p>12 eastern division DC. Do you know what geographic</p> <p>13 area this covers, other than the obvious East?</p> <p>14 A. The distribution center is in</p> <p>15 Pennsylvania, but, no, I don't know from a retail</p> <p>16 store perspective what specific geography did it</p> <p>17 service.</p> <p>18 Q. But this would be a procurement for that</p> <p>19 Pennsylvania distribution center?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And after that, it says, ISE Mark</p> <p>22 Lewis. What does ISE mean?</p> <p>23 A. I have no idea.</p> <p>24 Q. And then it reads, "Has agreed to hold</p> <p>25 his current underage, 155 back the northeast index."</p>	<p style="text-align: right;">28</p> <p>1 recall that.</p> <p>2 Q. At this point in 2003, where were you</p> <p>3 physically working for Albertsons?</p> <p>4 A. In Boise, Idaho.</p> <p>5 Q. Okay. So you were working from the main</p> <p>6 corporate offices?</p> <p>7 A. Correct. Uh-huh.</p> <p>8 Q. Okay. And you see it goes through other</p> <p>9 pricing issues, and then I'm looking down under the</p> <p>10 underlined part of No. 1. And it says, "Either" --</p> <p>11 the second sentence of that, "Either way, the</p> <p>12 combined COG reduction." Do you know what COG means?</p> <p>13 A. Cost of goods.</p> <p>14 Q. Okay. "And cost avoidance benefit comes</p> <p>15 to \$400,000, approximately." Do you know what the</p> <p>16 cost avoidance benefit is that's referred to here?</p> <p>17 A. Not specifically here.</p> <p>18 Q. Okay. What about generally, what would a</p> <p>19 cost avoidance benefit be?</p> <p>20 A. Generally speaking, if an incumbent</p> <p>21 supplier had positioned a cost increase to us, and we</p> <p>22 had the opportunity to either renegotiate with them</p> <p>23 to get a lower cost or to switch the business to</p> <p>24 somebody else who was qualified, and we avoided that</p> <p>25 price increase, we would reference it as a -- a</p>
<p style="text-align: right;">27</p> <p>1 Is that northeast index the Urner Barry index?</p> <p>2 A. That's my recollection.</p> <p>3 Q. Okay. Were all of your commodity egg</p> <p>4 purchases based off of the Urner Barry index?</p> <p>5 A. I don't know if all were, but it's my</p> <p>6 recollection that that was the standard that we, in</p> <p>7 essence, tried to negotiate from.</p> <p>8 Q. Okay. And it then says, "And charge no</p> <p>9 animal welfare logo expense to ABS." Is ABS</p> <p>10 Albertsons?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Was it your understanding that</p> <p>13 when Albertsons decided to purchase animal welfare --</p> <p>14 Let me back up.</p> <p>15 Was it your understanding that when</p> <p>16 Albertsons decided to purchase animal welfare</p> <p>17 certified eggs, that it understood that there would</p> <p>18 be a cost involved in doing so?</p> <p>19 A. No, that's not my -- my recollection.</p> <p>20 Q. Could it be the case and you're not</p> <p>21 remembering that, or it's your recollection that they</p> <p>22 did not believe there would be a cost associated?</p> <p>23 A. It's -- I don't have any specific</p> <p>24 recollection as to whether it did or didn't or I had</p> <p>25 anybody say it did or didn't. I don't -- I don't</p>	<p style="text-align: right;">29</p> <p>1 benefit of the exercise. No financial benefit for</p> <p>2 the company. We just avoided a cost increase</p> <p>3 situation.</p> <p>4 Q. Okay. Let's look at No. 2, which says</p> <p>5 "Florida DC." Is "DC" distribution center?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know where the Florida</p> <p>8 distribution center was?</p> <p>9 A. Plant City, Florida.</p> <p>10 Q. And after that, it references Zephyr</p> <p>11 Danny Linville. Do you recall this being one of your</p> <p>12 egg bidders?</p> <p>13 A. Seeing the name, it rings a bell. I</p> <p>14 don't remember the person's name.</p> <p>15 Q. Okay. And after that, it reads, "Has</p> <p>16 agreed to maintain bid cost, reduction of" -- and</p> <p>17 that's cost of goods?</p> <p>18 A. Sold.</p> <p>19 Q. "Cost of goods sold of \$250,000." What's</p> <p>20 the difference between cost of goods --</p> <p>21 A. Nothing.</p> <p>22 Q. Okay.</p> <p>23 A. Nothing. Me being inconsistent in an</p> <p>24 e-mail. That's all.</p> <p>25 Q. It's e-mail. We're all inconsistent.</p>

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<p style="text-align: right;">30</p> <p>1 "Agreed to reduce animal welfare 2 compliance costs to one penny per dozen versus two 3 penny per dozen." 4 Would that be an example of a cost 5 avoidance benefit? 6 A. I don't know because I don't specifically 7 recall if we were -- if Zephyr was an incumbent. So 8 if they were a new party wanting to be considered for 9 business, the fact that this represents a potential 10 improvement in a bid doesn't necessarily have any 11 implications on our spend or what we were spending, 12 would have spent, anything. 13 Q. The difference being if an incumbent is 14 willing to reduce a proposed price increase, that 15 would be cost avoidance to get out of that, but just 16 negotiating a bid would not necessarily fall into 17 that category? 18 A. Correct. 19 Q. Okay. Does this refresh your 20 recollection of whether Albertsons was expecting 21 there to be a compliance cost associated with the 22 animal welfare program? 23 A. It does not. 24 Q. And you see at the bottom, it says, 25 "Combined COG reduction and avoidance equals 318,700,</p>	<p style="text-align: right;">32</p> <p>1 between an animal welfare compliance cost, that was 2 referred to in No. 2, and an animal welfare logo 3 charge referred to in No. 3? 4 A. I don't. 5 Q. And then under the to do in this one, the 6 first sentence says, "Confirm that we have no 7 credible threat for Dallas (contact Sparboe)." 8 Do you have an understanding of what you 9 meant by that? 10 A. I would deduct that that means Cal-Maine 11 is the incumbent, but I don't specifically recall 12 that. 13 Q. When you were going through a category 14 review, would you make an effort to make sure there 15 was more than one bidder per geographic region? 16 A. Well, if there isn't more than one, 17 there's not much to review, so I guess yes would be 18 the answer. 19 Q. Okay. Let's look at No. 4. Phoenix 20 distribution center I'm going to assume is in 21 Phoenix; is that correct? 22 A. It's actually in Tolleson, Arizona. 23 Q. There you go. 24 And after this one, it says, "Hickman's 25 (Clint Hickman.)" Do you recall Hickman's being an</p>
<p style="text-align: right;">31</p> <p>1 approximately." 2 Did I read that correctly? 3 A. At the bottom of No. 2? 4 Q. Yes. The underlined part. 5 A. I do see it. 6 Q. Okay. Let's go to No. 3, the Dallas, 7 Fort Worth distribution center. Where was that 8 distribution center? 9 A. In Fort Worth. 10 Q. And there it says Cal-Maine. This -- 11 this is one of the companies that you recall being a 12 bidder, correct? 13 A. Yes. 14 Q. Do you remember if they were an incumbent 15 at this time? 16 A. Not specifically. 17 Q. Okay. "Has agreed to rebid at current 18 cents off. Eliminates a \$400,000 increase." 19 Does that refresh your recollection of 20 whether they would be an incumbent? 21 A. It doesn't. 22 Q. Okay. Then it reads, "And has agreed to 23 reduce his animal welfare logo charge to one cent per 24 dozen versus two cents per dozen." 25 Do you know if there was a difference</p>	<p style="text-align: right;">33</p> <p>1 egg bidder in this time period? 2 A. I don't specifically. 3 Q. And this reads, "Was unable to reach 4 Clint on Friday. Tried repeatedly. He did respond 5 Friday evening and left a message." 6 Would you be having direct contact with 7 the bidders during a category review like this? 8 A. I truly don't recall that. 9 Q. Would it be unusual for you to have that 10 kind of contact? 11 A. I don't recall. I don't remember. I 12 don't recall. 13 Q. The next sentence says, "We need to push 14 him down on his animal welfare cost. Hickman's is 15 the only supplier of 38 in this process to call out 16 the animal welfare logo at 3 cents per dozen." 17 Did I read that correctly? 18 A. Yes. 19 Q. Do you recall that Hickman's had a much 20 higher animal welfare compliance cost? 21 A. I have no -- no recollection at all. 22 Q. Okay. And you'll see the last sentence 23 of the to do underlined portion. "If we can get them 24 to maintain lower bid and reduce FMI compliance to 25 one cent per dozen, they would be \$150,000 good guy,</p>

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<p style="text-align: right;">34</p> <p>1 approximately."</p> <p>2 What did you mean by "\$150,000 good guy"?</p> <p>3 A. A financial benefit to the company. But</p> <p>4 I don't -- I don't really know what that means.</p> <p>5 Q. And it references "only supplier of 38 in</p> <p>6 this process." Do you recall there being 38 bidders</p> <p>7 during this bid?</p> <p>8 A. I do not.</p> <p>9 Q. Would that surprise you if there were?</p> <p>10 A. Nationally, no.</p> <p>11 Q. And when egg producers would respond to</p> <p>12 the RFI that Albertsons put out, would they submit a</p> <p>13 paper bid or was there an electronic system that they</p> <p>14 would submit a bid on?</p> <p>15 A. As I recall, it was an e-mail process</p> <p>16 filling out forms and sending them back.</p> <p>17 Q. Do you know where the bids -- who the</p> <p>18 bids were submitted to?</p> <p>19 A. The individual sourcing managers that</p> <p>20 were responsible for the categories.</p> <p>21 Q. And that would be corporate sourcing</p> <p>22 managers, not in each division, correct?</p> <p>23 A. That's my recollection.</p> <p>24 Q. Do you know if they maintained those bids</p> <p>25 in one centralized place?</p>	<p style="text-align: right;">36</p> <p>1 where these stores were serviced by a direct store</p> <p>2 delivery program versus getting their eggs from a</p> <p>3 company-owned distribution center.</p> <p>4 Q. And why would Albertsons be using a</p> <p>5 direct store delivery system as opposed to a</p> <p>6 distribution center in a particular area?</p> <p>7 A. All I can speculate is that the cost was</p> <p>8 lower to have them delivered directly to the store by</p> <p>9 a local provider. Theoretically, that's the only</p> <p>10 reason we would do that.</p> <p>11 Q. And after that, it says, "Rocky Mountain</p> <p>12 Shirley Jorgensen." Do you remember Rocky Mountain</p> <p>13 being an egg supplier to Albertsons, Inc.?</p> <p>14 A. I remember the name, but I don't recall</p> <p>15 if they were an actual supplier or just a</p> <p>16 participant. I don't know in the process.</p> <p>17 Q. And it refers to "Tom M. and I had a firm</p> <p>18 conversation with them and told them to go back to</p> <p>19 drawing board or they risk losing the DC business in</p> <p>20 Salt Lake."</p> <p>21 Is the Tom M. referred to there Tom</p> <p>22 McIntyre?</p> <p>23 A. I have to assume.</p> <p>24 Q. There's no other Tom M. that was involved</p> <p>25 in this process that you recall?</p>
<p style="text-align: right;">35</p> <p>1 A. I recall that that was the -- that was</p> <p>2 the process.</p> <p>3 Q. So for you to be writing a summary e-mail</p> <p>4 like this, would the sourcing managers be giving you</p> <p>5 this information?</p> <p>6 A. Logically, but I don't recall</p> <p>7 specifically that that's what happened here.</p> <p>8 Q. And this would -- this type of summary</p> <p>9 would be prepared after everyone had bid and those</p> <p>10 bids had been evaluated?</p> <p>11 A. I can only deduce by reading this that we</p> <p>12 were in the middle of that process and this was an</p> <p>13 update. It wasn't saying we're done. It's a</p> <p>14 strategy conversation to me where it's saying to do,</p> <p>15 to do, to do, to do. So it's more giving direction</p> <p>16 and making sure it's aligned with the folks on the</p> <p>17 e-mail that everyone agrees this is what we need to</p> <p>18 do.</p> <p>19 Q. Okay. And let's look at No. 5. SLC DC</p> <p>20 and North Nevada DSD. What's the SLC DC?</p> <p>21 A. Salt Lake City.</p> <p>22 Q. And where is that distribution center?</p> <p>23 A. In North Salt Lake.</p> <p>24 Q. And the northern Nevada DSD?</p> <p>25 A. I believe that's referring to a dynamic</p>	<p style="text-align: right;">37</p> <p>1 A. I don't specifically remember, but ...</p> <p>2 Q. Okay. They should respond to the</p> <p>3 following direction I gave them. "One, eliminate the</p> <p>4 cost increase for Reno DSD." That would be the</p> <p>5 direct store delivery again; is that correct?</p> <p>6 A. My assumption, yes.</p> <p>7 Q. "2, sharpen the pencil on the cents off</p> <p>8 bid for the SLC DC, and, 3, slit the FMI compliance</p> <p>9 charge of one and a half cents to three quarters of a</p> <p>10 cent per dozen."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yeah. Obviously, I left a "p" out of a</p> <p>13 word in slit, because I think it means to say</p> <p>14 "split." But yes.</p> <p>15 Q. You get to the same place.</p> <p>16 Is it your understanding that the FMI</p> <p>17 compliance charge is the same thing as the animal</p> <p>18 welfare compliance?</p> <p>19 A. I don't specifically recall. I mean,</p> <p>20 based on this document, deduct -- I could deduce that</p> <p>21 that's what it means, but I don't remember.</p> <p>22 Q. Okay. Was Albertsons a member of FMI at</p> <p>23 this time?</p> <p>24 A. I don't specifically remember.</p> <p>25 Q. Did you ever have any involvement with</p>

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<p style="text-align: right;">38</p> <p>1 FMI on behalf of Albertsons, Inc.?</p> <p>2 A. Not to my recollection, no.</p> <p>3 Q. What about on behalf of SuperValu?</p> <p>4 A. Not to my recollection, no.</p> <p>5 Q. Okay. And then under to do on this one,</p> <p>6 it says, "If they agree and change all of the above,</p> <p>7 it would represent 125,000 in COG</p> <p>8 reduction/avoidance."</p> <p>9 Then the next sentence says, "I made them</p> <p>10 very aware that we had a credible threat for the DC</p> <p>11 business and they clearly did not want to" -- I think</p> <p>12 it should be "lose it."</p> <p>13 Do you know who the credible threat for</p> <p>14 this particular DC was?</p> <p>15 A. No recollection at all.</p> <p>16 Q. Okay. And we've seen from several</p> <p>17 different ones of these that -- that there appear to</p> <p>18 be different animal welfare compliance costs in</p> <p>19 different regions. Do you know why that is?</p> <p>20 A. I have no idea.</p> <p>21 Q. Okay. Let's look at No. 6. And this</p> <p>22 refers to eastern Idaho DSD, eastern Washington DSD</p> <p>23 and Portland DC. I assume the eastern Washington is</p> <p>24 the state, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">40</p> <p>1 A. No idea.</p> <p>2 Q. And the fact that it refers to "national</p> <p>3 gets fired," does that indicate to you that you were</p> <p>4 eliminating an egg supplier as part of this process?</p> <p>5 A. I have no recollection. I don't know.</p> <p>6 For all I know, that's the name of the company.</p> <p>7 Q. Okay.</p> <p>8 A. I don't even know who that is.</p> <p>9 Q. And then underneath that, the second</p> <p>10 sentence of your last paragraph before butter -- or</p> <p>11 no, excuse me.</p> <p>12 Third sentence of that paragraph. "Block</p> <p>13 out as many of the other issues going on as you can</p> <p>14 and focus on eggs." Do you know what "other issues"</p> <p>15 you're referring to there?</p> <p>16 A. Let me read the paragraph.</p> <p>17 Q. Sure. Sure.</p> <p>18 A. I don't have any idea what the other</p> <p>19 issues would have been.</p> <p>20 Q. And the next sentence is, "This category</p> <p>21 is still trending to be about a \$1.75 million win.</p> <p>22 Short of target but still a great accomplishment."</p> <p>23 What was the target?</p> <p>24 A. No recollection.</p> <p>25 Q. Do you have a standard target when you go</p>
<p style="text-align: right;">39</p> <p>1 Q. And where is the Portland DC?</p> <p>2 A. It is in Portland.</p> <p>3 Q. And after that, it refers to Oakdale</p> <p>4 Farms. Do you remember Oakdale Farms being a</p> <p>5 supplier to Albertsons, Inc.?</p> <p>6 A. I remember the name, seeing it, but I</p> <p>7 don't specifically remember them being a supplier.</p> <p>8 Q. And it refers to "Great situation. They</p> <p>9 want all of our business out of the Portland DC, and</p> <p>10 retain their DSD business with" -- again, that's</p> <p>11 Albertsons?</p> <p>12 A. Yes.</p> <p>13 Q. And then they refer to -- the last</p> <p>14 sentence before the to do. "Also, John has agreed to</p> <p>15 one cent per dozen for animal welfare."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. And then under to do, you refer to, "The</p> <p>19 combined COG savings and one cent per dozen cost</p> <p>20 avoidance equals \$325,000 in benefits annually,</p> <p>21 approximately. This one is a winner because we</p> <p>22 consolidate the supplier base (national gets fired)</p> <p>23 and we get benefits."</p> <p>24 Do you know who national is who is</p> <p>25 referred to here?</p>	<p style="text-align: right;">41</p> <p>1 through the category review that you recall?</p> <p>2 A. I don't recall having a standard target,</p> <p>3 no.</p> <p>4 Q. So Albertsons during the course of this</p> <p>5 category review was expecting to benefit by</p> <p>6 approximately \$1.7 million?</p> <p>7 MR. MURRAY: Objection. Mischaracterizes</p> <p>8 his testimony.</p> <p>9 You can answer, if you know.</p> <p>10 THE WITNESS: Say that one more time,</p> <p>11 please.</p> <p>12 Q. BY MS. CRABTREE: I'll say it a different</p> <p>13 way.</p> <p>14 What did you mean by "This category is</p> <p>15 still trending to be about a \$1.75 million win"?</p> <p>16 A. I can only deduce that if we added up</p> <p>17 each of the estimates or approximate numbers that I</p> <p>18 referenced in all of the six things prior, that they</p> <p>19 roll up to something around 1.75 million.</p> <p>20 Q. And that's a benefit to Albertsons?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You can set this one aside.</p> <p>23 Did Albertsons actually pay the animal</p> <p>24 welfare compliance costs?</p> <p>25 A. I have no -- I have no specific</p>

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<p style="text-align: right;">42</p> <p>1 recollection.</p> <p>2 MS. CRABTREE: Okay. Let's mark Horner</p> <p>3 3.</p> <p>4 (Exhibit 3 was marked for identification.)</p> <p>5 MR. MURRAY: Thank you.</p> <p>6 Q. BY MS. CRABTREE: If you could take a</p> <p>7 moment to review.</p> <p>8 A. Sure.</p> <p>9 Q. And for the record, this is</p> <p>10 SVL_EGGS_100550.</p> <p>11 A. Okay.</p> <p>12 Q. And Exhibit 3 appears to be a fax from</p> <p>13 ISE America sent to Ms. Albrecht and that she</p> <p>14 forwards to you that you forward to Mr. Angell and</p> <p>15 Mr. McIntyre; is that correct?</p> <p>16 A. It appears to be that, yep.</p> <p>17 Q. Let's first look at the second page,</p> <p>18 which is the fax. And it references, "ISE America is</p> <p>19 willing to continue on a current pricing formula that</p> <p>20 is now in effect with ACME/Albertsons without adding</p> <p>21 an additional cost for the use of the AHC logo that</p> <p>22 is now on the carton."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. Does the ACME/Albertsons indicate to you</p>	<p style="text-align: right;">44</p> <p>1 dozen."</p> <p>2 Do you have any reason to doubt the</p> <p>3 veracity of that statement from this supplier?</p> <p>4 MR. MURRAY: Objection. Lack of</p> <p>5 foundation.</p> <p>6 You can answer, if you know.</p> <p>7 THE WITNESS: I have no recollection of</p> <p>8 what I thought then, so, you know, I would have no</p> <p>9 way of knowing if that's true or not. I have no</p> <p>10 idea.</p> <p>11 Q. BY MS. CRABTREE: Do you recall whether</p> <p>12 ISE was able to retain Albertsons' business by</p> <p>13 agreeing not to increase?</p> <p>14 A. I have no recollection at all.</p> <p>15 Q. If we look back at Exhibit 2, and note</p> <p>16 that this is dated Saturday, October 18th, 5 p.m.,</p> <p>17 and your Exhibit 2 e-mail is dated Saturday,</p> <p>18 October 18th, at 7 p.m., which division would this</p> <p>19 supplier relate to in Exhibit 2?</p> <p>20 A. No. 1.</p> <p>21 Q. Okay. And there it says ISE?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And, again, it looks like from the last</p> <p>24 sentence of your to do on that, it says, "Get a</p> <p>25 letter of agreement and execute cost change and get</p>
<p style="text-align: right;">43</p> <p>1 what area geographically ISE America was supplying</p> <p>2 Albertsons?</p> <p>3 A. It does.</p> <p>4 Q. And what area would that be?</p> <p>5 A. Well, it would be in the Northeast.</p> <p>6 Specific to the ACME-bannered stores.</p> <p>7 Q. And do you recall ISE America being an</p> <p>8 egg supplier for Albertsons?</p> <p>9 A. Only from seeing this document, but no</p> <p>10 recollection otherwise.</p> <p>11 Q. Do you know the -- what the AHC logo</p> <p>12 refers to?</p> <p>13 A. Had we not been talking about the animal</p> <p>14 welfare, it wouldn't even have rung a bell at all.</p> <p>15 Q. Okay. But is it your assumption that</p> <p>16 that means the animal welfare logo?</p> <p>17 MR. MURRAY: Objection. Calls for</p> <p>18 speculation.</p> <p>19 You can answer, if you know.</p> <p>20 THE WITNESS: Based on this discussion, I</p> <p>21 would deduce that, but I don't know it for sure.</p> <p>22 Q. BY MS. CRABTREE: The next sentence says,</p> <p>23 "As we both know, the costs throughout our industry</p> <p>24 for this AHC program at the present requirements of</p> <p>25 59 square inches is approximately two cents per</p>	<p style="text-align: right;">45</p> <p>1 contract process started."</p> <p>2 Does that indicate to you that ISE, in</p> <p>3 fact, was able to retain Albertsons' business with</p> <p>4 this bid?</p> <p>5 A. It does not.</p> <p>6 Q. Okay. Do you have any reason to doubt</p> <p>7 that ISE retained the business in 2003 in this area?</p> <p>8 MR. MURRAY: Objection. Lack of</p> <p>9 foundation.</p> <p>10 You can answer, if you know.</p> <p>11 THE WITNESS: I have no idea. It's just</p> <p>12 saying that the to do is to get that process started.</p> <p>13 I have no idea if we had signed an agreement or if</p> <p>14 they got through that process and everybody agreed.</p> <p>15 I have no idea.</p> <p>16 Q. BY MS. CRABTREE: Okay.</p> <p>17 A. No idea.</p> <p>18 MS. CRABTREE: You can set this one</p> <p>19 aside.</p> <p>20 Next will be Horner 4.</p> <p>21 (Exhibit 4 was marked for identification.)</p> <p>22 MR. MURRAY: Thank you.</p> <p>23 THE WITNESS: I want to know why I was</p> <p>24 working at 7:20 on a Saturday night.</p> <p>25 MS. CRABTREE: Hey. I'm not judging.</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 THE WITNESS: Get a life. All right.</p> <p>2 Q. BY MS. CRABTREE: SVL_EGGS_100117.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. And Exhibit 4 appears to be an</p> <p>5 e-mail from Jeff Hardin at CMfoods.com to yourself</p> <p>6 and Ms. Albrecht, Dolph Baker, and Tim Thompson that</p> <p>7 Ms. Albrecht forwards on to McIntyre.</p> <p>8 Do you remember who Jeff Hardin was?</p> <p>9 A. I do not.</p> <p>10 Q. Does the CM Foods indicate to you that</p> <p>11 he's with Cal-Maine?</p> <p>12 A. I don't know.</p> <p>13 Q. And who was Dolph Baker?</p> <p>14 A. No idea.</p> <p>15 Q. And Tim Thompson?</p> <p>16 A. No idea.</p> <p>17 Q. And Jeff writes, "Sage, Enjoyed our visit</p> <p>18 and I am hopeful that we have our ongoing</p> <p>19 relationship firmly solidified."</p> <p>20 Did Cal-Maine Foods visit Albertsons'</p> <p>21 headquarters during this bidding process?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall any egg producer visiting</p> <p>24 Albertsons' offices during this process?</p> <p>25 A. I recall that, but I have no idea who or</p>	<p style="text-align: right;">48</p> <p>1 Q. BY MS. CRABTREE: And the last paragraph</p> <p>2 of this e-mail references, "I look forward to working</p> <p>3 through the vendor-managed system with the objective</p> <p>4 of reducing your inventories and eliminating store</p> <p>5 phone orders."</p> <p>6 What was the vendor-managed system?</p> <p>7 A. I don't specifically recall.</p> <p>8 Q. Was that something you had involvement</p> <p>9 with at this point with Albertsons?</p> <p>10 A. I can only speculate it's about</p> <p>11 vendor-managed inventory versus system. And there</p> <p>12 were initiatives in place where vendors were able to</p> <p>13 basically facilitate the ordering of their products</p> <p>14 through our systems. But I have no idea if that was</p> <p>15 in eggs, if that was what this meant, I don't know.</p> <p>16 Q. And this document is dated several days</p> <p>17 after the review that you sent out on Saturday. So</p> <p>18 does this indicate to you that negotiations were</p> <p>19 still going on during this time?</p> <p>20 A. Yeah. Consistent with what you just</p> <p>21 referred to on Saturday, that was an update document,</p> <p>22 and I think this confirms that the process just</p> <p>23 continued on.</p> <p>24 MS. CRABTREE: Okay. You can set that</p> <p>25 one aside. Let's mark Horner 5.</p>
<p style="text-align: right;">47</p> <p>1 when or anything.</p> <p>2 Q. Do you know if it was more than one?</p> <p>3 A. I don't specifically remember, no.</p> <p>4 Q. As part of the category review, did you</p> <p>5 ask all of your bidders to come to make a pitch?</p> <p>6 A. Nope.</p> <p>7 Q. The next sentence reads, "As we</p> <p>8 discussed, Cal-Maine appreciates Albertsons' position</p> <p>9 on the animal welfare program and we agree that</p> <p>10 Cal-Maine should participate with Albertsons in</p> <p>11 sharing these costs."</p> <p>12 MR. MURRAY: Those costs.</p> <p>13 MS. CRABTREE: Those costs. Thank you.</p> <p>14 Q. BY MS. CRABTREE: "Consequently,</p> <p>15 Cal-Maine will share one cost per dozen of the cost</p> <p>16 in the bid related to animal welfare."</p> <p>17 Do you recall this negotiation?</p> <p>18 A. Huh-uh. No, I do not.</p> <p>19 Q. Do you have any reason to believe that</p> <p>20 this is an inaccurate portrayal of the negotiation?</p> <p>21 MR. MURRAY: Objection. Lack of</p> <p>22 foundation.</p> <p>23 You can answer, if you know.</p> <p>24 THE WITNESS: I don't have any reason to</p> <p>25 think this is inaccurate.</p>	<p style="text-align: right;">49</p> <p>1 (Exhibit 5 was marked for identification.)</p> <p>2 Q. BY MS. CRABTREE: Go ahead and take a</p> <p>3 look and let me know when you're ready.</p> <p>4 A. Sure.</p> <p>5 Q. This is SVL_EGGS_10056.</p> <p>6 A. Okay.</p> <p>7 Q. All right. And this -- I lost the</p> <p>8 number. Is it 5?</p> <p>9 A. Yeah. It is?</p> <p>10 Q. 5 is a series of e-mails culminating in</p> <p>11 an e-mail that you are cc'd on from Tom McIntyre.</p> <p>12 Let's go back to the beginning of the chain where a</p> <p>13 Sean McKinless refers -- sends an e-mail to Dwight</p> <p>14 Stanley. Who is Sean McKinless?</p> <p>15 A. Sean was group vice president of</p> <p>16 procurement for the company, for Albertsons.</p> <p>17 Q. So he would have been reporting to Dwight</p> <p>18 Stanley who was the director of procurement?</p> <p>19 A. Other way around.</p> <p>20 Q. Oh, so Dwight Stanley would be reporting</p> <p>21 to Mr. McKinless?</p> <p>22 A. To Sean.</p> <p>23 Q. Okay.</p> <p>24 And the subject is "Eggs. How we doing?"</p> <p>25 And in Mr. McKinless's e-mail, he refers to the</p>

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<p style="text-align: right;">50</p> <p>1 "baseline for logo cost avoidance should be 3 cents." 2 Do you know what he's referring to there? 3 A. I do not. 4 Q. And then Mr. Stanley forwards this to 5 Mr. Angell and Mr. McIntyre, which prompts McIntyre's 6 e-mail. And the other questions I have are for this 7 last e-mail that you were actually cc'd on. 8 A. Okay. 9 Q. And this is McIntyre to Mr. Stanley, cc'd 10 to you and Mr. Angell. It says, "Dwight, The average 11 for the vendors Albertsons has historically used was 12 2 cents. But I would agree that across the industry, 13 it could be as high as five cents, so three cents 14 would be a fair assumption." 15 Do you know what he's referring to here? 16 A. I don't specifically. I mean, I could 17 deduce from the comment here, but I don't 18 specifically know. 19 Q. Would the baseline be you go through a 20 category review, you -- I assume that you would need 21 to account for where you're getting savings and cost 22 avoidance; is that fair? 23 A. Yes. 24 Q. And in order to calculate cost avoidance, 25 would you have to set a baseline of, hey, if we</p>	<p style="text-align: right;">52</p> <p>1 columns, are these the different divisions that 2 Albertsons had at this time, to the best of your 3 recollection? 4 A. To the best of my recollection, these are 5 divisions of the former Albertsons, but I don't know 6 that that's all divisions -- 7 Q. Okay. 8 A. -- i.e., drugstore world. I don't see 9 anything that necessarily represents that 800 stores 10 worth of what the company was then. 11 Q. And what banner were the drug stores 12 being operated under? 13 A. Savon and Osco is my recollection. 14 Q. How do you spell Osco? 15 A. O-s-c-o. 16 Q. And look several paragraphs down where it 17 says, "These divisions/areas continue to be a 18 challenge." 19 Do you see where I'm at? 20 A. I do. 21 Q. It then says, "A bit of positive came on 22 Friday when Sparboe agreed they could provide the 23 animal welfare logo that we required." 24 Do you remember there being a problem 25 with Sparboe providing the logo required?</p>
<p style="text-align: right;">51</p> <p>1 hadn't negotiated, it would be X? 2 MR. MURRAY: Object to the form of the 3 question. It's vague. 4 And you can answer, if you know. 5 THE WITNESS: Well, I mean, I don't know 6 how to answer your question because if I heard you 7 correctly, you're assuming there would be a cost 8 avoidance dynamic in each category review, and that's 9 not necessarily the case. 10 Q. BY MS. CRABTREE: Okay. If there was a 11 cost avoidance dynamic, would you have to set a 12 baseline from which you were negotiating from for 13 that avoidance? 14 MR. MURRAY: Objection. Calls for 15 speculation. 16 You can answer, if you know. 17 THE WITNESS: The only response that 18 comes to mind is, we either have a formal price 19 increase with a specific amount, so therefore it's 20 just a pure number. You're not establishing a range. 21 It just becomes, here's the specific scenario. I'm 22 not familiar with this dynamic, I guess, that's 23 being, you know, spoken to in this e-mail string. 24 Q. BY MS. CRABTREE: Okay. And it appears 25 that he set forth a chart and across the top in the</p>	<p style="text-align: right;">53</p> <p>1 A. I do not. 2 Q. And then it says, "Apparently, there are 3 two different logos. Sparboe explained that one is 4 from FMI and one is from UEP. Sparboe can do the FMI 5 but not the UEP. I'm currently investigating exactly 6 what Ertharin announced that we would supply with." 7 Who is Ertharin? 8 A. Ertharin Cousins, I believe was her last 9 name, was an executive with Albertsons, I assume, at 10 that time, based on this e-mail. 11 Q. And do you remember her making some 12 statement about Albertsons' commitment to animal 13 welfare? 14 A. I have a very vague recollection of her, 15 the topic, and being in meetings about it. But I 16 don't specifically recall anything. 17 Q. Was it important to make sure that your 18 egg suppliers were complying with the standards that 19 Albertsons announced that it supported? 20 MR. MURRAY: Object to the form of the 21 question. It's vague. 22 THE WITNESS: I can only deduce from 23 reading these, but honestly I don't recall that. I 24 don't recall it outside of this dialogue. 25 Q. BY MS. CRABTREE: I wasn't talking</p>

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<p style="text-align: right;">54</p> <p>1 specifically about this. In a more general sense, 2 was it important that Albertsons' suppliers were 3 complying with the statements that Albertsons was 4 making to the public? 5 A. I just don't know what important means. 6 I don't know what your question is asking. 7 Q. Would it be problematic in your opinion 8 if Albertsons said it was complying with animal 9 welfare standards and its suppliers did not? 10 MR. MURRAY: Objection. Speculative. 11 THE WITNESS: Yes. 12 MR. MURRAY: Did you get my objection in? 13 Okay. 14 Q. BY MS. CRABTREE: The next paragraph 15 says, "Sparboe gives us a bit of leverage with 16 incumbents that are claiming to be at the bottom and 17 justify their cost increases with Albertsons' 18 decrease in sales volume." 19 What do you remember about a decrease in 20 sales volume of eggs around this time? 21 A. No recollection. 22 Q. Higher cost of business, what's your 23 recollection of that? 24 A. None. 25 Q. And new animal welfare specifications. I</p>	<p style="text-align: right;">56</p> <p>1 November e-mail string from Tom McIntyre to yourself, 2 Mr. Angell, Mr. Stanley, and a cc to Ms. Albrecht. 3 And it reads, "If we changed new vendors 4 in Rocky, Southern California and Southwest, the 5 total savings would be," and then it lists, animal 6 welfare at three cents saving -- animal welfare at 7 three cents, then it looks like a little arrow, \$4.4 8 million. Animal welfare at two cents, \$3.2 million. 9 Would these be cost avoidance numbers 10 calculated as part of this process? 11 A. I have no idea. 12 Q. And then, Mr. Stanley, do you have any 13 idea what these numbers refer to? 14 A. Mr. Stanley? Can you repeat what you 15 just said? 16 Q. Do you have any idea what these numbers 17 refer to? 18 A. Only from seeing the line above it that 19 says "total savings would be." But I have no 20 recollection, no thought beyond that. 21 Q. Okay. And then you see Mr. Stanley 22 replies, "Tom, do you have anything 'in writing' that 23 states the egg producers (not the suppliers) will 24 incur a 3 cent cost increase as a result of the 25 animal welfare changes?"</p>
<p style="text-align: right;">55</p> <p>1 think we've covered that thoroughly. 2 A. Sure. 3 Q. I think that's all I have on that one. 4 A. Okay. 5 Q. We've been going for about an hour. Do 6 you want to take a quick break? 7 A. I'm fine. 8 Q. Okay. 9 MR. MURRAY: He's actually got a board 10 meeting to get to, so -- with his new company. 11 MS. CRABTREE: Well, then we will keep 12 going. 13 What time is your board meeting? 14 THE WITNESS: It's middle of the 15 afternoon, but I've got a bunch of prep work to do 16 with other folks, so anything we can do to expedite 17 is appreciated. 18 MS. CRABTREE: Okay. 19 Let's mark Exhibit 6. 20 (Exhibit 6 was marked for identification.) 21 Q. BY MS. CRABTREE: I'm about halfway 22 through my documents if that gives you a sense. 23 A. Okay. Okay. Okay. 24 Q. Exhibit 6 is SVL_EGGS_100530. And the 25 first e-mail, this is October -- late October, early</p>	<p style="text-align: right;">57</p> <p>1 Did I read that correctly? 2 A. You did. 3 Q. Did you ever receive anything in writing 4 in response to Mr. Stanley's request? Did you ever 5 see? 6 A. I have no recollection if I did or 7 didn't. 8 Q. Okay. You can set that aside. 9 Why were animal welfare compliance costs 10 separated out as a separate line item during this 11 process in 2003? 12 A. I don't -- I don't recall. 13 Q. Was it a new cost for eggs that hadn't 14 been there before? 15 A. I don't recall. 16 MS. CRABTREE: Let's mark No. 7. 17 (Exhibit 7 was marked for identification.) 18 THE WITNESS: Okay. 19 Q. BY MS. CRABTREE: And this is a chart. 20 It appears to have been sent from McIntyre to 21 Mr. Stanley with a cc to you. Is this chart familiar 22 to you? 23 A. It's not. 24 Q. Do you know what this chart indicates? 25 A. Only by reading the subject line and</p>

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<p style="text-align: right;">58</p> <p>1 viewing it.</p> <p>2 Q. And it appears --</p> <p>3 In viewing it, what does this chart mean</p> <p>4 to you?</p> <p>5 A. Exactly what the subject line says:</p> <p>6 Animal welfare cost per dozen.</p> <p>7 And then it references an initial bid, a</p> <p>8 final bid, and the difference by vendor.</p> <p>9 Q. And I notice that it does not list 38</p> <p>10 vendors here. Would this be just the vendors that</p> <p>11 ended up being awarded some business?</p> <p>12 A. I have no specific recollection.</p> <p>13 Q. And the difference between initial bid</p> <p>14 and final bid, would that be the difference that</p> <p>15 Albertsons was able to negotiate with these vendors?</p> <p>16 A. I can only deduce that that's what it is.</p> <p>17 But ...</p> <p>18 Q. Okay.</p> <p>19 A. Okay.</p> <p>20 MS. CRABTREE: Let's mark ...</p> <p>21 MR. MURRAY: 8.</p> <p>22 MS. CRABTREE: Thank you.</p> <p>23 (Exhibit 8 was marked for identification.)</p> <p>24 MS. CRABTREE: You would be amazed how</p> <p>25 hard it is to count to 10 in this context.</p>	<p style="text-align: right;">60</p> <p>1 Hickman to Dutch Farms. Do you recall that vendor</p> <p>2 switch occurring?</p> <p>3 A. I do not.</p> <p>4 Q. Does this indicate to you that the egg</p> <p>5 bid wrapped up in November of 2003?</p> <p>6 A. It indicates that, yes.</p> <p>7 Q. Okay. Had you ever used Sparboe Farms as</p> <p>8 a vendor before this process?</p> <p>9 A. No recollection.</p> <p>10 Q. How about Dutch Farms?</p> <p>11 A. No recollection.</p> <p>12 Q. Do you know who -- do you know -- Was it</p> <p>13 your understanding that Dutch Farms would be</p> <p>14 procuring the eggs from a producer or that it was a</p> <p>15 producer itself?</p> <p>16 A. I have no recollection at all.</p> <p>17 MS. CRABTREE: And then let's now look at</p> <p>18 9 which is an e-mail a couple days later.</p> <p>19 (Exhibit 9 was marked for identification.)</p> <p>20 MR. MURRAY: Thank you.</p> <p>21 THE WITNESS: Thanks.</p> <p>22 Q. BY MS. CRABTREE: And this is</p> <p>23 SVL_EGGS_100122.</p> <p>24 A. Okay.</p> <p>25 Q. And this is an e-mail dated November 15th</p>
<p style="text-align: right;">59</p> <p>1 MR. MURRAY: It is.</p> <p>2 MS. CRABTREE: If I don't write the</p> <p>3 number down, I never catch it.</p> <p>4 Q. BY MS. CRABTREE: And this is</p> <p>5 SVL_EGGS_099914.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. This is an e-mail from McIntyre to</p> <p>8 Mr. Stanley with the cc to yourself and Mr. Angell</p> <p>9 dated November 14th, 2003, at 9:56 p.m. Boy, you</p> <p>10 guys are hard workers.</p> <p>11 A. Those were some tough years, yeah.</p> <p>12 Q. And it indicates, "Dwight, The loose ends</p> <p>13 with eggs have been tied up. We have made decisions</p> <p>14 for vendors." References - "Southern California -</p> <p>15 Norco (incumbent stays)." Then it says "Rocky."</p> <p>16 What area would that -- is that an area?</p> <p>17 A. I would assume Rocky Mountain, but I</p> <p>18 don't know for sure.</p> <p>19 Q. "Vendor switch from FMG to Sparboe,</p> <p>20 vendors notified." Do you recall FMG being a</p> <p>21 supplier?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know what FMG stands for?</p> <p>24 A. I do not.</p> <p>25 Q. And then Phoenix, vendor switch from</p>	<p style="text-align: right;">61</p> <p>1 from Pat Graves at gerps.com. Do you know who</p> <p>2 gerps.com is?</p> <p>3 A. I don't.</p> <p>4 Q. And it reads -- it's an e-mail to</p> <p>5 Mr. Angell. "I would strongly look at one cent if</p> <p>6 you would consider a two-year contract. Then no</p> <p>7 additional AC charges for you."</p> <p>8 And then Mr. Angell forwards this to you</p> <p>9 and McIntyre, "FYI, due to this change, the</p> <p>10 completion of Sparboe transition."</p> <p>11 Do you change your decision on Sparboe in</p> <p>12 response to this bid?</p> <p>13 A. I have no idea.</p> <p>14 Q. Okay.</p> <p>15 A. No recollection.</p> <p>16 MS. CRABTREE: Let's mark 10.</p> <p>17 (Exhibit 10 was marked for identification.)</p> <p>18 MR. MURRAY: Thanks.</p> <p>19 Q. BY MS. CRABTREE: And this is</p> <p>20 SVL_EGGS_101193.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. And this document appears to be a</p> <p>23 -- an e-mail from Sparboe to yourself, Mr. Angell,</p> <p>24 and McIntyre with some cc's. Who is Beth Sparboe</p> <p>25 Schnell?</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 A. I don't recall. 2 Q. Terry Cullhane? 3 A. Name's familiar, but don't recall. 4 Q. Familiar in -- 5 A. I just recognize the name, but no -- 6 that's it. 7 Q. You recognize him as maybe an Albertsons 8 employee or outside? 9 A. I don't know. 10 Q. Wendy Hamm? 11 A. No recollection. 12 Q. Okay. This is dated December 2nd, 2003, 13 and says, "Please read the documents attached," and 14 it's signed, Brian Joyer, quality assurance 15 supervisor, Sparboe Farms. 16 And then my questions are actually for 17 the attachment. And the second paragraph of this 18 letter, says, "Because of action taken by an animal 19 activist group on July 25th, 2003, Trader Joe's made 20 the following statement, 'Trader Joe's will continue 21 to sell ACC (animal care certified) eggs. However, 22 we have decided to remove the ACC logo from our 23 private label eggs." 24 Do you remember the animal activist group 25 action taken in July of 2003?</p>	<p style="text-align: right;">64</p> <p>1 Q. I'm sorry. The paragraph that starts "To 2 clear up any confusion." 3 A. Okay. 4 Q. And it's the second -- 5 A. Oh, I see. 6 Q. Yeah. 7 A. Okay. 8 Q. What did you do in response to this 9 letter? 10 A. No recollection. 11 Q. Did Albertsons stop placing the animal 12 care certified seal on its eggs? 13 A. I don't recall. 14 Q. Do you -- At any point before you left 15 Albertsons, SuperValu, did the company cease to have 16 the animal care or UEP-certified logo on its eggs? 17 A. I have no idea. 18 MS. CRABTREE: Let's look at 11. 19 (Exhibit 11 was marked for identification.) 20 MR. MURRAY: Thank you. 21 Q. BY MS. CRABTREE: This is 22 SVL_EGGS_101311. 23 A. Okay. 24 Q. And this Exhibit 11 appears to be a 25 series of e-mails between yourself, Mr. Angell, and</p>
<p style="text-align: right;">63</p> <p>1 A. I do not. 2 Q. Is Trader -- At this time, was Trader 3 Joe's a competitor of Albertsons? 4 A. Yes. 5 Q. Would that be in all of the markets in -- 6 all of the geographic areas in which Albertsons was 7 operating? 8 A. No. 9 Q. Okay. And then the third paragraph, 10 middle of the page, in your press release, 11 "Albertsons applauds and supports animal welfare 12 guidelines developed by the Food Marketing Institute 13 on 5/31/2002. The UEP program and seal is not 14 mentioned." 15 Do you recall the press release 16 referenced here? 17 A. I do not. 18 Q. And then the next paragraph down reads, 19 "Our recommendation would be to use the FMI program, 20 which follows your public relation efforts and 21 discontinue using UEP's animal certified seal -- 22 animal care certified seal." 23 Did I read that correctly? 24 A. I'm actually looking for where you just 25 read. Where is it again?</p>	<p style="text-align: right;">65</p> <p>1 McIntyre following the e-mail we just looked at. And 2 if you look at the bottom of page 1, Mr. Angell 3 responds to Mr. Joyer's letter and cc's you and 4 McIntyre and says, "Brian, All corporate brand egg 5 packaging currently authorized for use/sale at 6 Albertsons, Jewel, ACME and drug stores uses the UEP 7 logo. This clearly aligns us with our traditional 8 competitors in all markets." 9 Who were your traditional competitors in 10 those markets? 11 A. I don't specifically know what Gary meant 12 by using that word in this paragraph. 13 Q. The next sentence, "If Sparboe Farms 14 cannot supply corporate brand shell eggs to 15 Albertsons in compliance with the use of this logo, 16 please inform us immediately." 17 Did I read that correctly? 18 A. You did. 19 Q. So it appears that Albertsons was not 20 going to remove the logo from its eggs, correct? 21 MR. MURRAY: Object to the form of the 22 question. 23 THE WITNESS: I have no idea. 24 Q. BY MS. CRABTREE: But is that what 25 Mr. Angel's e-mail seems to indicate?</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 MR. MURRAY: Objection. Mischaracterizes 2 the document.</p> <p>3 THE WITNESS: I mean, I could only deduce 4 that from what's said here, but he's just saying 5 inform me immediately if you can't.</p> <p>6 Q. BY MS. CRABTREE: Okay. And Mr. Joyer 7 replies to all and cc's some of the people from the 8 previous e-mail and indicates that Sparboe Farms is 9 able to accommodate your requirement for animal 10 welfare certified eggs. And then Mr. McIntyre 11 forwards that to you and Mr. Horner -- you are 12 Mr. Horner -- you and Mr. Angell and says, "Still 13 seems like they're very nervous about using words 14 like we are compliant with the United Egg Producers 15 guideline and will be putting the checkmark logo on 16 all your corporate brand eggs in the future."</p> <p>17 And Mr. Angell says, "You are right, sir. 18 You going to be on the call at 2:30 tomorrow?" 19 Do you know what call he's referring to?</p> <p>20 A. I do not.</p> <p>21 Q. Did Sparboe Farms, in fact, supply 22 Albertsons with corporate brand eggs with the UEP 23 certified logo?</p> <p>24 A. I have no recollection. I don't know.</p> <p>25 MS. CRABTREE: Let's mark No. 12.</p>	<p style="text-align: right;">68</p> <p>1 and in good standing throughout the term of this 2 agreement. Failure to maintain a current 3 certification number shall result in a breach and 4 termination of this agreement.</p> <p>5 "Supplier's animal care certification 6 number is," and then there's a handwritten 198. 7 Did I read that correctly?</p> <p>8 A. You did.</p> <p>9 Q. Would this be a contract term specific to 10 eggs, to your knowledge?</p> <p>11 A. I don't specifically know.</p> <p>12 Q. Were there other animal welfare programs 13 that Albertsons required of its suppliers that you're 14 aware of?</p> <p>15 A. I don't specifically recall.</p> <p>16 Q. And if you look at the second to last 17 page, it appears to be -- it's -- it says, "Elizabeth 18 Clark, Albertsons, Inc., business law department" at 19 the top. Do you know who Ms. Clark is?</p> <p>20 A. I recall -- I recall the name. Yes, I do 21 recall Liz.</p> <p>22 Q. And then there's a list underneath that 23 says "tracking," and then it has a column for 24 recipient and response. And I just want to run over 25 the names in this to see if you recognize them.</p>
<p style="text-align: right;">67</p> <p>1 (Exhibit 12 was marked for identification.)</p> <p>2 Q. BY MS. CRABTREE: You are certainly 3 welcome to read the whole thing, but I will tell you 4 that I am only going to ask you about paragraph 3D, 5 and the second to last page.</p> <p>6 A. And the second to last page?</p> <p>7 Q. The second to last page where the 8 "approvals" are.</p> <p>9 A. Okay.</p> <p>10 Q. Okay. Do you recognize this -- this 11 document generally?</p> <p>12 A. I do.</p> <p>13 Q. And what is it?</p> <p>14 A. It appears to be our boilerplate private 15 label supply agreement.</p> <p>16 Q. And when you say your "boilerplate 17 private label," it wouldn't necessarily be specific 18 to eggs, but to your own -- your corporate brands?</p> <p>19 A. Right. You asked me generally what I -- 20 that's what I generally remember this to be.</p> <p>21 Q. And if you look on the second page under 22 paragraph D, there's an indication, "Supplier shall 23 provide Albertsons with its designated animal care 24 certification number upon execution of this 25 agreement. Such certification shall be kept current</p>	<p style="text-align: right;">69</p> <p>1 The first is Duncan MacNaughton?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Who is he?</p> <p>4 A. He was a senior merchandising executive 5 for the company at that time as I recall.</p> <p>6 Q. And Ed McCormick?</p> <p>7 A. He was a counterpart of mine.</p> <p>8 Q. In what way?</p> <p>9 A. Title and responsibility.</p> <p>10 Q. Do you know why Mr. MacNaughton would 11 need to approve this contract?</p> <p>12 A. We had signing protocols at the company 13 that triggered different levels of approval based on 14 the duration or the annual spend of the agreement. 15 So I could only assume that the time frame or the 16 annual spend of this required Duncan's authorization.</p> <p>17 Q. Would that be the same answer for 18 Mr. McCormick?</p> <p>19 A. Can you make that a question? I mean, 20 I'm not sure --</p> <p>21 Q. Why would Mr. McCormick be one of the 22 individuals approving this contract?</p> <p>23 A. I don't specifically recall what the 24 signing protocol was, so I just have to assume, like 25 requiring my approval, there was something about this</p>

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<p style="text-align: right;">70</p> <p>1 agreement that required at our level a review of and</p> <p>2 approval of.</p> <p>3 Q. Do you remember why you needed to review</p> <p>4 and approve it? You're the next name here.</p> <p>5 A. I recall that like many other categories,</p> <p>6 eggs were under my area of responsibility, and so,</p> <p>7 therefore, it rolled up to me for review and</p> <p>8 approval.</p> <p>9 Q. Who was Mr. Dennis Clark?</p> <p>10 A. At the time, I believe Dennis was the</p> <p>11 director of procurement for private label for the</p> <p>12 company.</p> <p>13 Q. And Jason Burnett?</p> <p>14 A. He was vice president of inventory</p> <p>15 management.</p> <p>16 Q. Steve Mesia?</p> <p>17 A. Very vague recollection of something to</p> <p>18 do with quality control, something like that.</p> <p>19 Q. Do you know why there's a number after</p> <p>20 his name?</p> <p>21 A. I don't recognize the specific number,</p> <p>22 but some e-mail addresses ultimately tied out to a</p> <p>23 business unit. So I wouldn't be surprised to find</p> <p>24 out that number means something to do with private</p> <p>25 label or quality assurance or something like that.</p>	<p style="text-align: right;">72</p> <p>1 we've looked at one or two here. And just a general</p> <p>2 discussion about what's gone on. That's it.</p> <p>3 Q. And when you say "we," you're indicating</p> <p>4 Mr. Murray?</p> <p>5 A. Correct.</p> <p>6 Q. Have you met with anyone else regarding</p> <p>7 this case?</p> <p>8 A. I received a phone call, I'll guess</p> <p>9 fourish months ago from Brian Bethke who is -- I</p> <p>10 don't actually know if he works for Albertsons, LLC.</p> <p>11 MR. MURRAY: Don't reveal the contents of</p> <p>12 your discussion.</p> <p>13 MS. CRABTREE: Yeah. I don't want to</p> <p>14 know what you talked about.</p> <p>15 THE WITNESS: That's the only other</p> <p>16 conversation.</p> <p>17 MR. MURRAY: He -- he works inhouse at</p> <p>18 Albertsons.</p> <p>19 MS. CRABTREE: Okay.</p> <p>20 MR. MURRAY: But the relationship may be</p> <p>21 on a contract basis rather than a full-time basis.</p> <p>22 It's evolving because of all the corporate changes</p> <p>23 that are going on now. I know he did at one point</p> <p>24 while he was working for Albertsons, LLC, still</p> <p>25 maintain some practice on the side.</p>
<p style="text-align: right;">71</p> <p>1 Q. Jim Stringfellow?</p> <p>2 A. He was a director of finance.</p> <p>3 Q. And Jason Maupin?</p> <p>4 A. I believe, as well, in the finance world,</p> <p>5 but beneath Jim.</p> <p>6 Q. We discussed Mr. Angell?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And there's a handwritten note underneath</p> <p>9 the approvals. Do you know whose handwriting that</p> <p>10 is?</p> <p>11 A. I do not.</p> <p>12 Q. Can you read it?</p> <p>13 A. I believe the first line says, "See page</p> <p>14 2." Miss something. The number icon ... question</p> <p>15 mark, and then I have no idea what the -- scar or</p> <p>16 maybe that's somebody's name. I don't know what that</p> <p>17 is on the bottom.</p> <p>18 Q. Okay. I didn't either.</p> <p>19 You can set this one aside.</p> <p>20 A. Okay.</p> <p>21 Q. Mr. Horner, what did you do to prepare</p> <p>22 for your deposition today?</p> <p>23 A. Very little. We met for approximately 30</p> <p>24 to 45 minutes yesterday. I had the complaint kind of</p> <p>25 shared with me, a couple of e-mails of which I think</p>	<p style="text-align: right;">73</p> <p>1 MS. CRABTREE: And as long as he's an</p> <p>2 attorney, I don't want to know what you talked about.</p> <p>3 MR. MURRAY: But he represents</p> <p>4 Albertsons, LLC.</p> <p>5 Q. BY MS. CRABTREE: When did you first</p> <p>6 become aware of this litigation?</p> <p>7 A. That initial phone call from Brian.</p> <p>8 Q. And you said that was about four months</p> <p>9 ago?</p> <p>10 A. My recollection, it was Januaryish.</p> <p>11 Q. Have you -- have you ever seen any press</p> <p>12 releases or press coverage of this -- about this</p> <p>13 case?</p> <p>14 A. Not that I recall, no.</p> <p>15 Q. Other than what you learned from counsel,</p> <p>16 what do you know about the allegations in the case?</p> <p>17 A. Nothing.</p> <p>18 Q. Okay. Do you have any ongoing business</p> <p>19 relationship with SuperValu or with Albertsons, LLC?</p> <p>20 A. No.</p> <p>21 Q. And when you left SuperValu in -- when</p> <p>22 did we say that was, approximately 2008 --</p> <p>23 A. That's my recollection.</p> <p>24 Q. -- have you had any business relationship</p> <p>25 with Albertsons or SuperValu since then?</p>

